IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Crl.MC.No. 3683 of 2007()

SC.1487/2005 of ADDL.ASSISTANT SESSIONS COURT, THALASSERY

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PETITIONER:

ABDUL SALAM, S/O. M.P. MUHAMMED
KADAVATHUKANDY HOUSE
MUNDERY AMSOM DESOM,
KANNUR DIST.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:

STATE OF KERALA, REP. BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Cr.M.C.No. 3683 of 2007

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Dated this the 10th day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 307 I.P.C. CWs. 1 to 3 were examined as PWs. 1 to 3. But on that day they could not be cross examined as the counsel was engaged in the trial of some other case. Later, an application was filed to recall these witnesses. That application was allowed with direction that cost must be paid to the Legal Service Authority and that the witnesses must be paid Rs.100/- each. There was also a direction to produce postage stamps for summoning PWs. 1 to 3. The petitioner allegedly deposited the amount of Rs.250/- as cost to the District Legal Service Authority. The petitioner thought that cost of Rs.100/- each need be paid when the witnesses come. But later it was realised that summons was not issued as he had not deposited the cost of witnesses and had not taken steps to produce the postage stamps for summoning PWs. 1 to 3. Accordingly the prayer of the petitioner to recall the witnesses was rejected.

2. The learned counsel for the petitioner submits that if PWs. 1 to 3 are not permitted to be recalled that would cause great prejudice and hardship to the petitioner. It is prayed that subject to appropriate conditions there may be a direction to the learned Addl. Asst. Sessions Judge to permit the petitioner to recall the witnesses and cross examine them.

3. I have gone through the petition. I have heard the submissions of the learned counsel for the petitioner. The error on the part of the petitioner may be gross. But I am satisfied that he must be given an opportunity to cross examine PWs 1 to 3 subject to appropriate conditions by the learned Sessions Judge. I need only observe that the petitioner can renew the request at the defence stage to recall the said witnesses for cross examination. The learned Addl. Asst. Sessions Judge must allow the said request subject to appropriate and reasonable terms.

4. This Crl.M.C. is allowed to the above extent.

5. Hand over copy of the order.

(R. BASANT)
Judge

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